Manshor bin Omar v Public Prosecutor and Another Application

HIGH COURT (KUALA LUMPUR) — CRIMINAL REVISION NOS 43–17 OF 2004 AND 43–23 OF 2004

ABDUL HAMID EMBONG J

25 NOVEMBER 2004

Criminal Procedure — Transfer of cases — Jurisdiction of sessions court — Charges related to offences committed in different places within vicinity of Klang Valley — Whether accused would be prejudiced by transfer — Whether in interest of justice to order transfer — Subordinates Court Act 1948 ss 99A, 104 and para 3(2) to Third Schedule

The sessions judge had ordered for the transfer of both the applicants' cases to the sessions court at Ampang to be jointly tried with another case. The five charges against the applicants were in relation to offences which were said to have been committed in Kuala Lumpur, whilst the Ampang charge concerned offences which allegedly occurred in Selangor. The applicants applied for a revision of that order. The issues were: (1) whether the sessions judge was seized with jurisdiction to transfer these cases; and (2) whether, if he had such a power, he had properly exercised that power, in that he had done so, 'where the interest of justice' so required him to affect those transfers.

Held, dismissing the application for revision:

(1) Taking into consideration s 104, together with s 99A and para 3(2) of the Third Schedule of the Subordinates Court Act 1948, it was clear that the sessions judge in this instance had exercised his jurisdiction to transfer these cases within the power provided by the law (see para 8).

(2) The term 'where the interest of justice' merely means that when a judge makes a ruling or order he has, utmost in his mind, the fundamental of the requirements of fairness and justice. The order of transfer of these cases will tend to the general convenience of the parties and witnesses (see para 8). Although the charges referred to offences which took place in different places, they were all in the vicinity of the Klang Valley—the applicants' interest would not be prejudiced by having their cases tried in the same court at Ampang. More pertinently was the consideration that the charges arose from dealings in the same project and would involve the same witnesses and documents. It would certainly be convenient to all the applicants alike, to have them tried at the same forum (see para 9).

A [**Bahasa Malaysia summary**

Hakim mahkamah sesyen telah mengarahkan pemindahan kedua-dua kes-kes pemohon-pemohon ke mahkamah sesyen di Ampang untuk dibicarakan bersama dengan satu lagi kes. Lima penuduhan terhadap pemohon-pemohon
B dikatakan dilakukan di Kuala Lumpur, sementara penuduhan Ampang berkaitan dengan kesalahan yang berlaku di Selangor. Pemohon-pemohon memohon penyemakan perintah tersebut. Isu-isunya adalah: (1) sama ada hakim sesyen mempunyai bidang kuasa untuk memindah kes-kes tersebut; dan (2) sama ada, jika beliau mempunyai kuasa tersebut, beliau telah menggunakan kuasa tersebut dengan betul, dan beliau telah menggunakannya 'di mana demi
C keadilan' memerlukan beliau membuat perintah pemindahan itu.

Diputuskan, menolak permohonan untuk penyemakan:

(1) Mengambil kira s 104, bersama dengan s 99A dan perenggan 3(2) Jadual
D Ketiga Akta Mahkamah Rendah 1948, ianya jelas hakim mahkamah sesyen dalam kes semasa telah menggunakan bidang kuasanya untuk memindahkan kes-kes ini di bawah kuasa yang telah diperuntukkan oleh undang-undang (lihat perenggan 8).

(2) Terma 'di mana demi keadilan' hanya bermakna apabila hakim
E membuat perintah atau keputusan, beliau telah, mengutamakan dasar keadilan dan saksama. Perintah pemindahan kes-kes ini akan memudahkan pihak-pihak dan saksi-saksi (lihat perenggan 8). Walaupun penuduhan merujuk kepada kesalahan-kesalahan yang berlaku di tempat yang berbeza, kesemua tempat-tempat ini adalah di
F kawasan Lembah Klang—kepentingan pemohon-pemohon tidak diprejudiskan dengan kes-kesnya dibicarakan di mahkamah yang sama di Ampang. Yang lebih penting untuk dipertimbangkan adalah penuduhan-penuduhan tersebut timbul dari urusan-urusan berkait dengan projek yang sama dan akan melibatkan saksi-saksi dan
G dokumen-dokumen yang sama. Ianya tentu memudahkan kesemua pemohon-pemohon untuk kes-kes ini dibicarakan di forum yang sama (lihat perenggan 9).]

Notes

H For a case on jurisdiction of sessions court to transfer cases, see 5 *Mallal's Digest* (4th Ed, 2004 Reissue) paras 4180 and 4195

For cases on transfer of cases, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4163–4198.

For jurisdiction of sessions court, see 18 *Halsbury's Laws of Malaysia* (2003),
I para [310.008]

For transfer of criminal cases, see 18 *Halsbury's Laws of Malaysia* (2003), paras [310.356–310.358]

Case referred to

Lim Kong v Public Prosecutor [1962] MLJ 195 (refd)

Legislation referred to

Anti-Corruption Act 1997 ss 10(a)(aa), 11(a)
Courts Ordinance ss 59(2), 104
Criminal Procedure Code s 417
Subordinate Courts Act 1948 ss 59, 99A, 104, para 3(2) to Third Schedule

Appeal from: Case No 62–37 of 2004 (Sessions Court, Kuala Lumpur)

V Rajadevan (Hazman bin Ahmad (Raja Badrol Hazman) with him) (Rajadevan & Assoc) for the applicants in Case No 43–17 of 2004 and 43–23 of 2004.

Zulqarnain bin Hassan DPP (Anti-Corruption Agency, Malaysia) for the respondent in Case No 43–17 of 2004 and 43–23 of 2004.

Abdul Hamid Embong J:

[1] In both these applications for a revision the applicants sought to set aside the order made by the learned sessions judge on 6 February 2004 in transferring both their cases to the sessions court at Ampang to be jointly tried with another case in the Ampang sessions court, involving two accused persons jointly charged. The applicant in Criminal Revision No 43–17 of 2004 is charged with four counts of corruption under s 11(a) of the Anti-Corruption Act 1997 and also jointly charged with the applicant in 43–23 of 2004 on another count of corruption under s 10(a)(aa) of the same Act. The case in the Ampang sessions court involved two other persons who are jointly charged with corruption under s 10(a)(aa) of the same Act. All the six charges spread over a period between March 1998 to December 1999. The five charges against the applicants were said to have been committed in Kuala Lumpur, whilst the Ampang charge occurred in Selangor.

[2] The learned sessions court judge, had on the application by the prosecution, transferred the cases against the applicants to the Ampang sessions court seemingly on the grounds that the cases involved the same witnesses and revolved around the same documents. In other words, a joint trial would shorten the trial process and benefit all parties.

[3] Before me, it was argued by learned counsel for the applicants that there is a 'territorial limit' in the jurisdiction of each sessions court and thus in this instance the learned sessions judge lacked the power to transfer these cases to the Ampang sessions court. Learned counsel could not furnish any authority for that proposition save for the case of *Lim Kong v Public Prosecutor* [1962] MLJ 195. In that case the same ground as raised in these applications was later abandoned on appeal, but Adam J did hold in *obiter dictum*, that the

jurisdiction of a sessions court is 'Federation wide' as stated in s 59(2) of the Courts Ordinance. This position remains the same today and no local limits is assigned to sessions courts or its judges under the equivalent s 59 of the Subordinate Courts Act 1948. The learned judge also found that s 104 of the same Ordinance gives a president (now sessions judge) power to transfer any case or matter to any sessions court in the interest of justice.

[4] Learned counsel also submitted that s 417 of the Criminal Procedure Code should be invoked in this instance and that the prosecution should have applied to the High Court instead for a transfer of these cases. The learned deputy public prosecutor in reply stated that there is no local limit to the jurisdiction of a sessions court and that it may act to transfer a case to another sessions court in the interest of justice. For these cases it was submitted, the series of corrupt practices which are the subject matter of the charges arise from transactions pertaining to the same housing project, involving the same parties. The offences are similar in nature and they involve the same witnesses and it would be convenient to all to have the cases jointly tried at the Ampang sessions court with the other case pending there.

[5] The power of a subordinate court to transfer cases to another court of coordinate jurisdiction is provided by s 104 of the Subordinates Court Act 1948 which states:

> 104 Power of Sessions Court Judge or Magistrate to order transfer of criminal cause or matter.
>
> A Sessions Court Judge or a Magistrate shall have jurisdiction in any criminal cause or matter, whether or not he has jurisdiction finally to hear and determine the same, to order, in any case where the interests of justice so require, that the cause or matter be transferred to any other Sessions Court or Magistrates' Court, as the case may be, which in his opinion has jurisdiction to hear and determine the same, and the same may be continued in that other Court accordingly:
>
> Provided that nothing in this section shall be deemed to confer jurisdiction on any court to which a proceeding is so transferred, if that court would not otherwise have jurisdiction in respect thereof.

[6] This power is further amplified by s 99A of the same Act which provides:

> 99A Further powers and jurisdiction of courts.
>
> In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates' Court shall have the further powers and jurisdiction set out in the Third Schedule.

[7] Paragraph 3(2) of the Third Schedule on transfers of proceedings states:

3 Transfer of proceedings.

(1) (Repealed)

(2) Power, on application or of its own motion, to transfer any proceedings to another court of co-ordinate jurisdiction.

[8] Taking all these provisions together, it is clear that the learned sessions judge in this instance had exercised his jurisdiction to transfer these cases within the power provided by the law. The next question is whether he had properly exercised that power, in that he had done so, 'where the interest of justice' so required him to affect those transfers. This phrase hides no magical formula. It merely means that when a judge makes a ruling or order he has, utmost in his mind, the fundamental of the requirements of fairness and justice. The notes of proceedings do not show that the learned sessions judge had not judicially considered this interest of justice factor. The same reasons given here by the learned deputy were laid before the sessions judge as the grounds for that application of a transfer. In my considered view the learned sessions judge had not been wrong in ordering this transfer. It is also my view that in this case, the order of transfer of these cases, will tend to the general convenience of the parties and witnesses, a factor which the High Court would similarly take into consideration in ordering a transfer under s 417 of the Criminal Procedure Code.

[9] Learned counsel for the applicants also argued that the charges occurred in different places, namely in Kuala Lumpur, Selayang and Bangi, thus it would not be in the interest of justice to the applicants to have the cases tried in the Ampang sessions court. To me, these places are all in the vicinity of the Klang Valley and I do not see how the applicants' interest would be prejudiced by having their cases tried in the same court at Ampang. More pertinently is the consideration that the charges arise from dealings in the same project and would involve the same witnesses and documents. It would certainly be convenient to all the applicants alike, to have them tried at the same forum. For these reasons, this application for a revision was dismissed.

Application dismissed.

Reported by Loo Lai Mee